IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

CRL.A.No. 490 of 2007()

AGAINST THE JUDGEMENT IN CC.1632/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

.....

APPELLANT: COMPLAINANT.

RAVEENDRAN,
THUNDIL KIZHAKKE THARAYIL, KOTTAKKAKOM WARD,
CHAVARA, KOLLAM.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS: ACCUSED/STATE.

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1. SMT.RAMANI, POOVAKKATTU VEEDU,
PUNNATHALA CHERRY, THIRUMULAVARAM P.O., KOLLAM.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 490 OF 2007

Dated this the 8th day of August, 2007

JUDGMENT

This appeal is filed against the judgment in C.C. No. 1632 of 2001 on the file of the Judicial First Class Magistrate's Court II, Kollam. The appellant is the complainant.

2. The case of the complainant was that the accused - first respondent herein borrowed from him an amount of Rs.45,000/- and issued Ext.P1 cheque in discharge of the said liability which when presented to the bank for encashment was dishonoured stating " account closed". On receipt of intimation regarding dishonour of the cheque, statutory notice was issued to the accused and inspite of receipt of notice, the amount covered by the cheque was not paid and hence, the complaint was filed. To prove the case against the accused, the complainant himself was examined as PW.1 and Exts.P1 to P4 were produced. No oral or documentary evidence was adduced on the side of the defence. On closing the evidence of the complainant, the accused was questioned under

Section 313 Cr.P.C. She denied the allegations levelled against her.

3. By the impugned judgment, the court below acquitted the accused on the sole ground that the complainant - appellant failed to prove that the statutory notice was sent to the accused within 15 days of receipt of intimation from the bank regarding dishonour of the cheque. The trial court also found that the complainant did not produce the copy of the intimation he had received from the bank showing dishonour of the cheque.

4. Heard the learned counsel appearing for the appellant and perused the records made available before this Court. It is seen that the appellant has produced Annexure A1 along with the appeal memorandum which shows that the cheque in question was dishonoured on 29.6.2000. Learned counsel appearing for the appellant submits that the date mentioned in Annexure A1 is the date of intimation of dishonour of the cheque. Counsel further submits that as per Section 138 of the Negotiable Instruments Act, 1881 obligation is cast on the complainant to give notice regarding dishonour of the cheque within 15 days from the date of receipt of the intimation and to give such time to the accused to repay the amount covered by the cheque. Hence, according to the learned counsel, the

impugned judgment is not sustainable.

5. It is to be noted that the trial court acquitted the accused only on the ground that the document showing the date of intimation of dishonour of the cheque was not produced by the complainant. In all other respects, the trial court accepted the case of the complainant. The question to be considered is whether by not producing the intimation of dishonour of the cheque, the appellant has violated the provision regarding issuance of notice within 15 days of intimation. In this context, the purpose of giving notice to a drawer of the cheque has been considered by the Apex Court in the decision reported in **Rajneesh Aggarwal v. Amit J. Bhalla (2001) 1 S.C.C. 631.** In the above judgment, the Apex Court held as follows:

> "The object of issuing notice indicating the factum of dishonour of the cheques is to give an opportunity to the drawer to make the payment within 15 days, so that it will not be necessary for the payee to initiate any criminal action, even though the bank dishonoured the cheques. ....."

Hence, the stipulation of notice within 15 days of intimation by itself will not free the accused - first respondent from payment of the amount covered by the cheque. In this context, the latest judgment of the Apex

Court reported in **Alavi Haji, C.C. v. Palapetty Muhammed, 2007(3) I.L.R. (Kerala) 203** is also to be looked into. In the said judgment the Apex Court held that even if statutory notice is not given to the accused, it is enough to give him a warning and the time to repay the amount covered by the cheque and that this can be done even after receipt of summons from the court.

6. In the above circumstances, the reason stated by the trial court for acquitting the accused - first respondent is not legally sustainable. Hence, the impugned judgment is set aside and the matter is remanded to the trial court for fresh consideration from the stage at which the impugned judgment was passed.

The Crl. Appeal is allowed by way of remand. The appellant shall appear before the trial court on 15.9.2007. The trial court shall issue fresh notice to the first respondent on appearance of the appellant. The parties are allowed to adduce additional evidence, if any.

(K.THANKAPPAN, JUDGE)

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